

**United States Bankruptcy Court
Eastern District of Michigan**

**NOTICE OF PROSED AMENDMENTS TO
LOCAL RULES AND REQUEST FOR COMMENTS**

As a result of the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the Court is considering the adoption of:

- The attached proposed local rules.
- The attached proposed guidelines.
- The attached proposed amended "Bankruptcy Petition Cover Sheet."
- The "Interim Bankruptcy Rules" dated August 2005, approved by the Advisory Committee on Bankruptcy Rules and the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States. Those interim rules are available at:

http://www.uscourts.gov/rules/BK_Interim_Rules_Redline.pdf

The Court is also considering the abrogation of existing local rules 2083-1 and 4001-4.

The Court intends to make any local rules amendments effective on October 17, 2005, when BAPCPA 2005 becomes effective.

The Court solicits comments regarding these proposals. Interested parties may submit comments by email to MIEBcomments@mieb.uscourts.gov. Comments must be received by Friday, October 7, 2005.

Steven Rhodes
Chief Bankruptcy Judge

September 29, 2005

**Proposed Local Rules
Relating to BAPCPA 2005**

RULE 1007-1 Bankruptcy Petition and Schedules

(h) Dismissal for failure to file tax returns under § 521(e)(2)(B) or (C) Before filing a motion under 11 U.S.C. § 521(e)(2)(B) or (C), the movant shall obtain a hearing date from the judge's courtroom deputy clerk and serve notice of the hearing on all parties in interest. Any party in interest may be heard at the hearing. Written objections are permitted but not required. If the movant seeks a hearing on the motion before the meeting of creditors, the movant shall file the motion no later than three days after the expiration of the deadline in 11 U.S.C. § 521(e)(2)(A)(i).

RULE 1007-3 Credit Counseling Compliance

(a) Certification Procedures A debtor who files a certification under 11 U.S.C. § 109(h)(3)(A) shall also file a motion for approval of the certification. The debtor shall file the certification and the motion with the petition, serve it on all parties, and file a proof of service. The deadline to file a response shall be 10 days after service. If no timely response is filed, the certificate shall be deemed satisfactory under 11 U.S.C. § 109(h)(3)(A)(iii) without a hearing. The motion shall be accompanied by a notice that the deadline to file a response is 10 days after service and that if no response is filed, the Court will deem the certificate satisfactory under 11 U.S.C. § 109(h)(3)(A)(iii) without a hearing.

(b) Additional Extension of Time A motion for an extension of time under 11 U.S.C. § 109(h)(3)(B) shall be served on all parties and may be accompanied by an ex parte motion for an expedited hearing. If the Court grants an expedited hearing, the debtor shall promptly serve notice of the hearing on all parties.

(c) Motion to Excuse Credit Counseling A motion seeking relief under 11 U.S.C. § 109(h)(4) shall be filed under LBR 9014-1. The deadline to file the motion is 15 days after the petition is filed.

RULE 1020-1 Procedures for Small Business Chapter 11 Cases

(a) An objection to the debtor's designation as a small business debtor under Bankruptcy Rule 1020(b) shall be by motion under LBR 9014-1 served on all parties in interest.

(b) A request for a determination under Bankruptcy Rule 1020(c) shall be by motion under LBR 9014-1 served on all parties in interest.

RULE 2015-5 Procedure Upon Chapter 13 Plan Completion

Within 60 days after the expiration of the time period for the debtor to comply with LBR 4004-1, the trustee's final report and account shall be filed and served on all holders of allowed claims. The report shall state the allowed amount of each claim and the amount paid thereon. The report shall

also inform creditors:

(a) That the deadline to file a motion objecting to the debtor's discharge under 11 U.S.C. § 1328(a) is 30 days after service of the report, that the motion shall be filed under LBR 9014-1, that if no objection is timely filed, a discharge will be entered, and that if a timely motion is filed, the discharge will be delayed until the Court determines whether the discharge should be granted.

(b) That the order of discharge will include findings that:

- (1) all allowed claims have been paid substantially in accordance with the plan, and
- (2) with respect to secured claims which continue beyond the term of the plan, any pre-petition or post-petition defaults have been cured and such claims are in all respects current, with no escrow balance, late charges, costs or attorney fees owing.

(c) That the order of discharge will direct that:

- (1) the creditors who held secured claims which were fully paid shall execute and deliver to the debtor a release, termination statement, discharge of mortgage or other appropriate certificate suitable for recording; and
- (2) the creditors who hold secured claims which continue beyond the term of the plan shall take no action inconsistent with the above findings.

(d) Whether the debtor filed the certification regarding domestic support obligations required under 11 U.S.C. § 1328(a).

(e) That unless a party timely objects under subparagraph (a), the Court may find without a hearing that there is no reasonable cause to believe that:

- (1) 11 U.S.C. § 522(q)(1) may be applicable to the debtor; and,
- (2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind specified in 11 U.S.C. § 522(q)(1)(A) or liable for a debt of the kind described in 11 U.S.C. § 522(q)(1)(B).

RULE 4004-1 Domestic Support Certification in Chapter 13 Cases

A certification regarding a domestic support obligation required under 11 U.S.C. § 1328(a) shall be filed and served on the trustee and any domestic support obligation creditor within 30 days after the completion of all payments under the plan.

RULE 4001-6 Additional Stay Procedures Under BAPCPA 2005

(a) **Motion to Extend the Stay** The deadline to file and serve a motion to extend the stay under 11 U.S.C. § 362(c)(3)(B) is 7 days after the petition is filed. Before filing the motion, the movant shall obtain a hearing date from the judge's courtroom deputy clerk and serve notice of the hearing on all parties in interest. Any party in interest may be heard at the hearing. Written objections are permitted but not required.

(b) Motion to Order the Stay to Take Effect Before filing a motion to order the stay to take effect under § 362(c)(4)(B), the movant shall obtain a hearing date from the judge's courtroom deputy clerk. The motion and notice of hearing shall be served on all parties affected by the motion and the trustee. A party who seeks a hearing within 21 days of filing the motion may file an ex parte motion for an expedited hearing.

(c) Objection Under 11 U.S.C. § 362(l)(3)(A) Before filing an objection under 11 U.S.C. § 362(l)(3)(A), the objecting party shall obtain a hearing date from the judge's courtroom deputy and serve the objection and a notice of hearing on the debtor and the trustee. Otherwise the objection shall be deemed waived.

(d) Order Regarding the Existence of the Stay Relief under either 11 U.S.C. §§ 362(c)(4)(ii), 362(j) or 521(a)(6) shall be upon motion filed under LBR 9014-1. The motion shall be titled, "Motion for an Order Confirming That No Stay Is in Effect," or "Motion for an Order Confirming That the Stay Has Been Terminated." The motion may be accompanied by an ex parte motion for an expedited hearing.

RULE 4001-7 Pre-Confirmation Payments in a Chapter 13 Case

(a) Payment by the Trustee

(1) Conditions of Disbursements The trustee shall disburse pre-confirmation payments under 11 U.S.C. § 1326(a)(1) to creditors holding purchase money security interests in personal property and to lessors of personal property, if:

(A) Funds are available;

(B) A proof of claim setting forth the amount of the monthly obligation is filed by the 14th day of the month prior to the next regularly scheduled disbursement by the trustee;

(C) The plan proposes that the claim will be paid through the plan by the trustee;

(D) The plan proposes that the debtor will retain possession of the secured or leased property; and,

(E) A stay is in effect as to the secured or leased property.

(2) Timing of Disbursement The trustee's disbursements shall be made at the same time that the trustee makes other regular monthly disbursements.

(3) Amount of Disbursement The disbursements shall be thirty percent of the debtor's regular monthly obligation to secured creditors and one hundred percent of the debtor's regular monthly obligation to personal property lessors. If the trustee has insufficient funds on hand to make all of the required disbursements, the disbursements shall be made on a pro rata basis.

(4) Dismissal or Conversion Upon dismissal or conversion of the case, the trustee shall make the required pre-confirmation disbursements before disbursing any funds to the debtor.

(5) Trustee's Statutory Fee The trustee shall be awarded and paid the applicable statutory percentage fee for all pre-confirmation disbursements.

(b) Payment by the Debtor

(1) Conditions of Payment The debtor shall make pre-confirmation payments under 11 U.S.C. § 1326(a)(1) to creditors holding purchase money security interests in personal property and to lessors of personal property, if:

- (A) A proof of claim setting forth the amount of the monthly obligation is filed;
- (B) The debtor is current in the monthly payment obligations to the creditor;
- (C) The plan proposes that the claim will be paid directly by the debtor;
- (D) The plan proposes that the debtor will retain possession of the secured or leased property; and,
- (E) A stay is in effect as to the secured or leased property.

(2) Timing and Amount of Payment by the Debtor The debtor's payments shall be made pursuant to the debtor's contractual obligation.

RULE 4008-1 Reaffirmation Agreements and the Presumption of Undue Hardship

If a debtor who has entered into a reaffirmation agreement is represented by counsel and the presumption of undue hardship under 11 U.S.C. § 524(m) applies, the debtor shall file a motion for approval of the reaffirmation agreement. The motion shall be accompanied by the papers specified in 11 U.S.C. § 524(k)(1) and Bankruptcy Rule 4008. The title of the motion shall be " Motion for Approval of Reaffirmation - Presumption of Undue Hardship Applies." The motion will be set for hearing.

RULE 9001-1 Definitions

(b) First Day Motion. A "First Day Motion" is a motion filed by a debtor in a chapter 11 case for relief which the debtor believes is so important to the initial stages of the case that the best interests of the bankruptcy estate warrant granting a hearing on the motion upon shortened or limited notice.

RULE 9014-1 Motion Procedure Generally

(f) This Rule does not apply to:

- (1) an objection to claim (see Rule 3007-1);
- (2) a motion for reconsideration (see Rule 9024-1);
- (3) a matter covered by Rule 9006-1 relating to reduction or enlargement of time;
- (4) a motion to withdraw the reference pursuant to F.R.Bankr.P. 5011(a);
- (5) a motion for leave to appeal pursuant to F.R.Bankr.P. 8001(b) and 8003;
- (6) a motion to dismiss pursuant to Rule 2003-1;
- (7) a motion to dismiss under Rule 1007-1(h);
- (8) a matter covered by Rule 1007-3 relating to credit counseling compliance; and,
- (9) a motion seeking approval of a reaffirmation agreement.

**Proposed Guidelines
Relating to BAPCPA 2005**

1. Failure to complete the financial management course

The clerk will not issue a discharge if the certificate required by Bankruptcy Rule 1007(b)(7) and (c) (new) is not timely filed. If the debtor files the certificate after the case is closed, the debtor must file a motion to reopen to request the entry of the discharge.

2. Waiver of filing fee

The application must be filed on the official form. The Court will review all such applications in chambers. The Court may deny an application without a hearing. If the Court schedules a hearing, the Court will give notice to the debtor and the trustee.

3. Tax Return Compliance

A motion under 11 U.S.C. §§ 521(j), 1307(e) or 1308 shall be filed under LBR 9014-1.

[PROPOSED]

UNITED STATES BANKRUPTCY COURT
Eastern District of Michigan
_____ Division

In re:

Case No. _____

_____ Debtor(s). _____ /

BANKRUPTCY PETITION COVER SHEET

(The debtor must complete and file this form with the petition in *every* bankruptcy case. Instead of filling in the boxes on the petition requiring information on prior and pending cases, the debtor may refer to this form.)

Part 1

“Companion cases,” as defined in LBR 1071-1(c), are cases involving any of the following: (1) The same debtor; (2) A corporation and any majority shareholder thereof; (3) Affiliated corporations; (4) A partnership and any of its general partners; (5) An individual and his or her general partner; (6) An individual and his or her spouse; or (7) Individuals or entities with any substantial identity of financial interest or assets.

Has a “companion case” to this case ever been filed at any time in this district or any other district? Yes ____ No ____
(If yes, complete Part 2.)

Part 2

For each companion case, state in chronological order of cases: (Attach supplemental sheets if necessary.)

	First Case	Second Case	Third Case
Name on petition	_____	_____	_____
Relationship to this case	_____	_____	_____
Case number	_____	_____	_____
Chapter	_____	_____	_____
Date filed	_____	_____	_____
District	_____	_____	_____
Division	_____	_____	_____
Judge	_____	_____	_____
Status/Disposition	_____	_____	_____

(Pending, confirmed & still open, confirmed & closed, dismissed before/after confirmation, discharged, etc.)

If the present case is a Chapter 13 case, state for each companion case:

Attorney _____
Legal fee \$ _____ \$ _____ \$ _____

Proposed legal fee in this case \$ _____

Changes in circumstances which lead the debtor(s) to reasonably believe that the current plan will be successful:

Part 3 - In a Chapter 13 Case Only

Do the debtor(s) and the debtor's(s') attorney certify the following: (See 11 U.S.C. § 1328(f).)

1. The debtor(s) has (have) *not* received a discharge in a case filed under chapter 7, 11, or 12 during the 4 years before filing this case; and,
2. The debtor(s) has (have) *not* received a discharge in a case filed under chapter 13 during the 2 years before filing this case.

YES ____

NO ____

I declare under penalty of perjury that I have read this form and that it is true and correct to the best of my information and belief.

Debtor
Date: _____

Debtor

Debtor's Attorney